

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

GEBRONT MAZAUNTI GADDY,
a/k/a "T,"
a/k/a "JB,"

Petitioner,

v.

CIVIL ACTION NO. 3:11-CV-49
CRIMINAL ACTION NO. 3:08-CR-50
(BAILEY)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation ("R&R") of United States Magistrate Judge David J. Joel [Civ. Doc. 5; Crim. Doc. 84]. By Standing Order, entered on March 24, 2000, this action was referred to Magistrate Judge Joel for submission of a proposed report and recommendation ("R&R"). Magistrate Judge Joel filed his R&R on December 15, 2011. In that filing, the magistrate judge recommends that this Court deny and dismiss petitioner Gebront Mazaunti Gaddy's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [Civ. Doc. 1; Crim. Doc. 71] "because of its untimeliness, because the *Johnson* and *Carachuri-Rosendo* decisions are not retroactively applicable to collateral review of Petitioner's conviction, and because Petitioner is not entitled to equitable tolling for actual innocence of the career offender designation." ([Civ. Doc. 5; Crim. Doc. 84] at 18).

Pursuant to 28 U.S.C. § 636 (b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Joel's R&R were due by January 9, 2012, pursuant to 28 U.S.C. § 636(b)(1). To date, no objections have been filed. Accordingly, this Court will review the R&R for clear error.


Upon careful review, it is the opinion of this Court that the magistrate judge's Report and Recommendation [**Civ. Doc. 5; Crim. Doc. 84**] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated therein. Accordingly, the petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [**Civ. Doc. 1; Crim. Doc. 71**] is hereby **DENIED** and **DISMISSED WITH PREJUDICE**. As such, this Court **DIRECTS** the Clerk to enter judgment in favor of the respondent and strike this case from the active docket of this Court. As a final matter, upon an independent review of the record, this Court hereby **DENIES** the petitioner a certificate of appealability.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and

to mail a copy to the *pro se* petitioner.

DATED: January 12, 2012.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE